



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the  
Request for Opinion concerning  
the conduct of LON L. ITSON,  
Constable, Goodsprings Township  
Clark County, State of Nevada.

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Request for Opinion No.: 07-44C

#### EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

The following is the Executive Director's recommendation based on the Investigator's report (TAB A).

Constable Lon L. Itson (Itson) is alleged to have failed to remit funds to Cavalry Portfolio Services, LLC (Cavalry) that he collected from a wage garnishment. Cavalry alleges that Itson violated:

- NRS 281A.400.4 when he accepted the funds as compensation for the performance of his duties by failing to remit the funds to the creditor.
- NRS 281A.400.7 when he used governmental time, property to collect the funds apparently for his own personal benefit.
- NRS 281A.400.8 (This section applies only to a member of the Legislature; therefore, this allegation is not applicable in this matter.)

#### **A. JURISDICTION:**

In his capacity as the elected constable of the Goodsprings Township, Itson is a public officer as defined by NRS 281A.160. As such, the Nevada Commission on Ethics (Commission) has jurisdiction over this complaint.

Itson submitted a *Waiver of Statutory Time Requirement* form on November 5, 2007.

#### **B. RELEVANT STATUTES:**

##### **NRS 281A.160.1 "Public officer" defined.**

"Public officer" means a person elected or appointed to a position which is established by . . . a statute of this State . . . which involves the exercise of a public power, trust or duty.

## **RELEVANT STATUTES (CONTINUED)**

**NRS 281A.400 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

2. A public officer . . . shall not use his position in government to secure . . . unwarranted privileges, preferences, . . . or advantages for himself. . . . As used in this subsection:  
(b) “Unwarranted” means without justification or adequate reason.
4. A public officer . . . shall not accept any . . . augmentation . . . or other compensation from any private source for the performance of his duties as a public officer . . .
7. A public officer . . . shall not use governmental time, property . . . to benefit his personal or financial interest.

**NRS 281A.480 Commission authorized to impose civil penalties; filing by Commission of report or proceeding concerning willful violation committed by public officer; circumstance in which violation not deemed willful; effect of chapter upon criminal law; judicial review; burden of proof.**

2. In addition to other penalties provided by law, the Commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney’s fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281A.440 against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.
7. The provisions of this chapter do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers . . . If the Commission finds that a public officer . . . has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

### **C. RECOMMENDATION:**

Due to Itson’s failure to remit the funds in a timely manner, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.400.2, NRS 281A.400.4 and NRS 281A.400.7.

If the Commission finds that Itson has committed a willful violation of this chapter, and the Commission believes the violation may also constitute a criminal offense, it is recommended that the Commission refer the matter to the district attorney for a determination of whether a crime has been committed that warrants prosecution.

**D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):**

On October 4, 2007, a Request for Opinion (complaint) was received from Jayda Cooke (Cooke), Legal Administrator, Cavalry. The following is the substance of the allegations:

July of 2004, Cavalry filed a wage garnishment, on a debt it acquired from American Investment Bank, N. A. (American). The wage garnishment was filed against James Jones (Jones) at his place of employment, Nevada Landing Hotel and Casino. July through November 2004, Itson collected, but Cavalry never received, the garnishment funds.

On February 14, 2006, Itson called Cavalry and advised that he had sent \$1,400.00 to another creditor by mistake.

As of September 28, 2007, Cavalry had not received the funds from the wage garnishment. Cavalry attempted to contact Itson numerous times by mail and phone but without success.

**E. SUMMARY OF SUBJECT'S RESPONSE:**

On December 10, 2007, Itson submitted the Subject's Response to the complaint. The following is a summary of his response:

Itson collected \$1,797.19 from the garnishment of Jones wages from July through November 2004. The funds were sent to the wrong creditor in error, but were later returned to Itson.

Jones informed Itson that Cavalry was continuing to garnish Jones' wages for the amount Itson had already collected. Jones gave Itson a contact phone number for Cavalry, and Itson contacted Cavalry.

Itson informed Cavalry that he would forward the funds as soon as Cavalry sent documentation to him verifying that they had a valid claim to the funds. Itson did not receive the documentation until October 2007. Itson believes that he did not receive correspondence from Cavalry because they were attempting to send mail to his physical address on Garnet Avenue. The post office returns any mail attempted to be delivered to Itson's physical address as "not a valid address." The address he used during his last nine years is HCR 37 Box 408, Sandy Valley, Nevada.

The Commission sent letters dated December 19 and 20, 2007 to Itson requesting additional information through the United States Postal Service (USPS) by certified and regular mail. The first letter was a request for copies of bank records relating to receipt and disbursement of funds.

The second letter was a *Notice of Additional Issues and Facts* regarding Itson's conduct as it relates to NRS 281A.400.2 and the use of his position to secure unwarranted advantages for himself. Specifically, Itson was requested to account for the funds from the time the funds were collected in 2004 through the time the funds were finally disbursed in 2007. No response to the letters has been received from Itson.

## **F. INVESTIGATIVE ACTIVITIES:**

The investigator:

- Received *Waiver of Statutory Time Requirement* form on November 5, 2007 **(TAB A)**.
- Reviewed Request for Opinion (complaint), including the following documents **(TAB B)**:
  - Writ of Execution filed regarding the Judgment in the case of Cavalry who acquired American's debt from Jones in 2004.
  - List of all funds withheld from Jones payroll but never remitted to Cavalry.
  - Pay history showing all funds collected by Cavalry.
  - Copies of checks remitted by the constable of the Las Vegas Township.
  - Cavalry computer screen capture of file notes on a February 2006 conversation between Cavalry and Itson wherein he advised Cavalry that he sent funds to the wrong creditor and would be forwarding those funds to Cavalry.
  - Letter from Cavalry dated January 8, 2007, sent certified mail informing Itson that Cavalry has not received the funds he had collected and requested that he contact Cavalry. (This letter was returned, undelivered, to sender.)
- Reviewed the following documents **(TAB C)**:
  - E-mail messages between Cooke and Commission Interim Executive Director Adriana Fralick from October 11 through October 24, 2007.
  - Letter dated October 15, 2007 from Cavalry to Itson regarding the Assignment and Assumption Agreement with Limited Power of Attorney between Cavalry and American.
  - Letter dated October 17, 2007 from Itson to Cavalry regarding the garnishment funds he collected; copy of check dated October 17, 2007 in the amount of \$1,371.68 sent by Itson to Cavalry.
- Reviewed response received December 10, 2007 from Itson, including the following **(TAB D)**:
  - Letter dated December 6, 2007 to Cavalry regarding error in disbursement of funds.
  - Copy of check dated August 30, 2004 indicating partial disbursement of funds in the amount of \$184.74.
  - Copy of check dated December 7, 2007 correcting the error in the amount of \$200.00.
- Requested additional information to Itson **(TAB E)**:
  - December 19, 2007 letter regarding request for bank records relating to receipt and disbursement of funds.
  - December 21, 2007 *Notice of Additional Issues and Facts* regarding Itson's conduct as it relates to NRS 281A.400.2 and use of his position to secure unwarranted advantages for himself.
  - Certified mail and postal service tracking information.

## **INVESTIGATIVE ACTIVITIES (CONTINUED)**

- Unsuccessful attempts at phone contact by leaving several voice mail phone messages at phone number listed on Itson's letterhead and cellular phone number from January 2 through 4 and January 7 through 8, 2008.
- Reviewed NRS 258 – Constables and the Clark County website regarding constables and process of wage garnishments (**TAB F**).

## **G. CONCLUSION AND RECOMMENDATION:**

Itson has not responded to the Commission letters dated December 19 and 20, 2007. The USPS track and confirm website indicates that attempted delivery was made on December 21 and December 23, 2007 and a notice was left. Copies of the letters were also sent by regular mail on January 4 but have not been returned to the Commission as undelivered.

The last phone contact with Itson occurred when he left a voicemail message for the investigator on December 21, 2007. He was responding to a voice message left for him regarding the December 19 and 20 letters that he would be receiving. Attempts to return his call to his office and cellular phone have been unsuccessful. The most recent attempts to contact Itson by phone result in no messages being left for him since his office voicemail is full and the cellular phone will not connect.

Cooke verified by phone on January 7, 2008 that Cavalry received all funds with the final December 7, 2007 disbursement from Itson. The disbursement of funds owed to Cavalry occurred only after Cavalry submitted this complaint and Commission staff contacted Itson regarding this matter.

Due to Itson's failure to remit the funds in a timely manner, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.400.2, NRS 281A.400.4 and NRS 281A.400.7. If the Commission finds that Itson has committed a willful violation of this chapter, and it believes may also constitute a criminal offense, it is recommended that the Commission shall refer the matter to the district attorney for a determination of whether a crime has been committed that warrants prosecution.

## **REPORT PREPARED BY:**

Matt C. DiOrio DATED: 01/08/08  
MATT C. DI ORIO  
SENIOR INVESTIGATOR

## **APPROVAL AND RECOMMENDATION BY:**

Patricia D. Cafferata DATED: January 8, 2008  
PATRICIA D. CAFFERATA, ESQ.  
EXECUTIVE DIRECTOR